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RR RUEHCHI RUEHDT RUEHNN
DE RUEHHM #0039/01 0330945
ZNR UUUUU ZZH
R 020945Z FEB 10
FM AMCONSUL HO CHI MINH CITY
TO RUEHC/SECSTATE WASHDC 6281
INFO RUEHHI/AMEMBASSY HANOI 4165
RUEHHM/AMCONSUL HO CHI MINH CITY 6524
RUCNASE/ASEAN MEMBER COLLECTIVE

UNCLAS SECTION 01 OF 03 HO CHI MINH CITY 000039

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E.O. 12958: N/A
TAGS: [ECON](#) [KIPR](#) [EAID](#) [ETRD](#) [VM](#)
SUBJECT: HCMC IPR BUSTS DEMONSTRATE IMPACT OF MISSION EFFORTS

REF: A) HCMC 584 B) HANOI 32

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11. (SBU) Summary: Ho Chi Minh City police recently raided the largest illegal disc production operation to date, seizing millions of CDs and DVDs and disrupting a ring that is believed to stock up to 60% of the shops selling illegal discs to the HCMC market. This bust comes close on the heels of a separate raid, in which authorities seized thousands of illegally reproduced English books on behalf of American rights holder McGraw Hill. Although weak deterrents and complex implementation of Vietnam's IPR laws will mitigate the overall impact on the market for infringed goods, the raids do represent an increase in overall enforcement activities in HCMC over the last year and steady progress on the IPR front. They also reflect sustained Mission efforts to raise GVN awareness and capacity about IPR, which should continue to broaden with further USG engagement. End Summary.

HCMC IPR Enforcers on a Roll

12. (U) IPR enforcement agencies in HCMC have engaged in a number of significant crackdowns over the last few months. On January 5, local media reported that district police had raided the largest CD/DVD making production in the city's history. In three different locations, police confiscated disc making machines, labeling equipment and millions of discs, including about 300,000 discs with pirated content, and thousands of blanks made in China. According to reports, the ring leaders belong to a private company licensed to produce blank discs who authorities believe supply up to 60% of the shops selling illegal discs on the HCMC market, the Mekong Delta and southern provinces.

13. (SBU) Just one month earlier a major U.S. book publisher triumphed when authorities busted a major copyright violator that was selling thousands of illegal copies of McGraw Hill's top selling English learning books. The owner of Quynh Mai books had been illegally reprinting McGraw's products for months, defending his actions in the name of "helping the poor access education," and directly flouting cease and desist orders from the National Copyright Office. However, in early December last year, Department of Information and Communication enforcers and the economic police raided the infringing bookstore, seizing thousands of unauthorized copies of the McGraw Hill publications before seizing hundreds more from the owner's warehouse and printing facility.

14. (SBU) Finally, in a separate major IPR action last November, GVN customs officials confiscated more than 800 counterfeit Nokia mobile phones at HCMC's Tan Son Nhat international airport. The phones were purported to have been manufactured in Hungary but the associated documents and mismatching serial numbers showed they were made in China. Both Nokia Vietnam representatives and the importer of the imposter goods verified that the phones were fakes.

Two Steps Forward, One Step Back?

15. (SBU) Each of the crackdowns on violated goods represents a solid step forward, yet the actions also highlight some of the challenges that still exist in Vietnam's IPR regime. First, while the busts were a temporary victory for the rights holders who were directly affected, it is unlikely to impact HCMC's overall market for pirated DVDs, counterfeit phones or illegally printed books in a meaningful way. The fact that violations are common, rampant, and profitable means that even when a huge player is knocked out, it merely opens the playing field for other violators to jump in or expand their reach. Without stronger penalties, such as criminal convictions and larger fines, there is little incentive for infringers to stay on the sidelines.

16. (SBU) Although the revisions to the IPR law last year were designed to provide for stronger penalties for IP violations, administrative fines are still applied to the vast majority of

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IPR violations, and fines remain too low to be a consequential deterrent. The revised 2009 criminal code provides criminal penalties for commercial scale IP infringement; however, IP cases that have been pursued in the criminal courts to date have also involved either politically offensive content or consumer safety issues; GVN authorities could not cite any that have been pursued in criminal courts based exclusively on IP violations. Tran Xuan Minh, criminal judge for the People's Court, told EconOff he did not know what sorts of penalties were likely to be applied in the latest DVD bust since the case is still under investigation, but criminal prosecution would likely only occur if there is politically sensitive content. In the case of the Nokia phones, customs officials said that the offense was not serious enough to be handled criminally and violators were given a monetary administrative fine. Such administrative fines often amount to no more than a light slap on the wrist, when compared with potential profits from the sale of infringing goods.

17. (SBU) Further complicating IPR enforcement is the bureaucratic residue of overlapping jurisdiction and unclear regulations. Steering Committee 168, an interagency IPR group, was designed to be the clearing house for all IPR-related enforcement. However, Ms. Trang, Vice Chairman of the committee, said that the agency that conducted the bust, a HCMC urban district police department, acted alone and that she does not have details, indicating that interagency cooperation on IPR enforcement is not as tight as promulgated. According to Customs officials, implementation is also complicated by regulations requiring enforcers to have rights holder's permission prior to making a bust. For example, Customs Director Mr. Le Kien Thanh told EconOff that even when his agency has a strong suspicion that goods are pirated, they cannot take action unless it involves a rights holder that has "registered" with Customs. However, there are only 35 rights holders active on that list - Nokia just happened to be one of

the lucky ones registered with HCMC Customs. This may explain why, though this bust was important, it was the only IPR action Customs has taken all year.

US Efforts Helping Raise Awareness

¶8. (SBU) In the McGraw Hill case, it took IP enforcers more than eight months to crack down after the cease and desist order had been issued from Hanoi. McGraw had appealed to USPTO, FCS and EconOffs for assistance in the case but had not yet tried to engage with any local authorities. At an IPR training in late October, HCMC ConGenOffs told the Market Management Bureau director Nguyen The Thong during a coffee break about the IPR infringement issues McGraw was facing. Mr. Thong said it sounded like a case on which they could take action; about six weeks later the Department of Information and Communications led the team that busted the violating bookstore.

¶9. (SBU) Whether or not direct U.S. efforts prompted the GVN authorities' decision to crack down in the McGraw case, indirect U.S. efforts also may be raising awareness among GVN enforcement agencies about IPR issues. The USPTO regional representative has spoken regularly at local trademark and copyright conferences, and U.S. Mission Vietnam has organized IPR training and workshops over the last year for hundreds of enforcers, judges, prosecutors and customs authorities. The basic message about IPR is starting to spread into local enforcement offices, even when it doesn't translate into clear action against infringers. Chief Judge Tran Van Su at the HCMC People's Court lauded the impact of U.S.-sponsored study tours, saying to EconOff that he and other judges had gained great insight about how IPR laws are implemented on a prior trip to the U.S. Similarly, Mr. Thanh emphasized several times the lack of understanding about IPR issues among GVN agencies and the value his staff gains from participating in training.

Comment:

¶10. (SBU) Greater IPR efforts in HCMC are occurring at a time when, somewhat ironically, it is more difficult to meet with agencies and get information about their activities. Several

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enforcement agencies declined to meet with EconOff, citing "continuing investigation" or "busy until after Tet," and it has been difficult to get concrete details about the latest bust concerning the nature of the goods, rights holders or potential punishment. Yet agencies do appear to be taking more action against infringers, even if they are reluctant to talk to USG about it. Some offices have even gone above and beyond, such as the HCMC People's Court, which invited EconOff to attend a criminal trial for infringed goods. Although enforcement appears to be making headway in HCMC, there has not been parallel action in other provinces of northern, central, and southern Vietnam, reflecting market realities as well as local capacity and training. End Comment.

¶11. (U) This cable was coordinated with Embassy Hanoi.
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